IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975 Case No. 74-1504

BAGLEY PRODUCE, INC.,

Petitioner,

-vs-

NATIONAL LABOR RELATION BOARD,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI

EISENBERG & KLETZKE

1131 West State Street
Milwaukee, Wisconsin 53233

Attorneys for Petitioner

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This petition is made pursuant to Rule 58(2) of the Rules of the Supreme Court wherein this Court has enumerated its power to rehear any petition for a writ of certiorari where it is shown that "intervening circumstances of substantial or controlling effect or...other substantial grounds available to petitioner although not previously presented."

Petitioner herein strongly asserts that actions taken by the plaintiff employees, after petitioner's filing of the original request for a writ of certiorari, strongly affect the material facts in this case. This whole action was brought on the grounds that petitioner wrongfully fired a number of his employees for participating in "concerted activities." This was the sole issue that remained throughout this lawsuit and it was the decision of the United States Court of Appeals that petitioner fired its employees for just such a reason that prompted the application for a writ of certiorari. Petitioner has contended at all times that the reason the employees were dismissed was for other improper conduct that had nothing to do with any concerted activity. It was petitioner's contention that no one likes to be left without a job and that the myth of "concerted activity" was created merely to gain reinstatement to their former positions.

Although this Court has denied the writ of certiorari requested by petitioner, the activities of this employee group since this request was filed, clearly indicate that the fact of concerted activity did not exist. In another action started by these employees against petitioners they alleged as the sole ground of their dismissal the fact of racial

discrimination. Although this was not the reason they were dismissed, it indicates that this group of employees are irrate about losing their jobs and will attempt anything to gain reinstatement. There was no concerted activity, as indicated by these employees' complete reliance on discrimination as their ground for the second attack and there was no discrimination as the Court subsequently found.

The employees' actions in this case are a simple indication of harrassment of management for exercising its inherent right to discharge employees for just cause. Petitioner therefore prays that this Court grant a rehearing on the issue of the petition for a writ of certiorari.

Respectfully submitted,

EISENBERG & KLETZKE

/s/ Sydney M. Eisenberg
Sydney M. Eisenberg

POST OFFICE ADDRESS:
1131 West State Street
Milwaukee, Wisconsin 53233
Telephone Number: 271-0931

CERTIFICATE

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

SYDNEY M. EISENBERG, being first duly sworn on oath, deposes and says:

1. That he is the attorney for petitioner BAGLEY PRODUCE, INC., in this case and makes this Certificate in compliance with Rule 58(2) of the Rules of the Supreme Court;

2. That he has caused, on behalf of petitioner, a petition for writ of certiorari to be brought before this Supreme Court;

3. That said petition was duly denied by the Supreme Court on October 1, 1975.

4. That he presents this petition for rehearing of the petition for a writ of certiorari in good faith and not for delay;

5. That this petition is restricted to the grounds asserted by petitioner in the above statements;

6. That he is making this Certification in support of petitioner's request for a rehearing of the petition for a writ of certiorari.

DATED at Milwaukee, Wisconsin, this 22nd day of October, 1975.

/s/ Sydney M. Eisenberg
Sydney M. Eisenberg

SUBSCRIBED and SWORN to before me this 22nd day of October, 1975.

/s/ William C. Mosher
NOTARY PUBLIC, Milwaukee County, Wisconsin
My Commission ~~Expires:~~ is permanent

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
EQUAL RIGHTS AND LABOR STANDARDS DIVISION

STATEMENT OF EMPLOYMENT COMPLAINT

Lena Roby, et al
Name

3345 North 25 Street
Address

Milwaukee, Wisconsin
City

Complainant

VS

Bagley Produce
Name

1101 W. Canal Street
Address

Milwaukee, Wisconsin
City

Respondent

This Complaint Concerns -

( ) Hire ( ) Wages

(X) Discharge ( ) Condition of Employment

TMA3-0524

( ) Age ( ) Sex

(X) Race ( ) Handicap

( ) Creed ( ) National Origin

( ) Color ( ) Ancestry

RECEIVED MAR 5 1973 U.S. EEOC MILW. DIST. OFFICE

Please state all relevant details, being specific as to names, dates, etc.

On February 7, 1973, we, all Black employees, went to talk with Richard Loehndorf to ask for a raise for the cutters. One cutter, Cora Tatum, was not with us because she was on sick leave under doctors care. Mr. Loehndorf told us he was too busy to talk about it, he had to talk with his father and brother and that we should take the day off and think about it. The same day he sent us telegrams at home telling us that we were terminated because we refused to work. This was not what happened - we reported ready to work but were told to go home. There are 10 cutters employed, 9 are Black one is Spanish Speaking. The Spanish Speaking girl was with us when we asked for the raise, however, is still working. We feel we have been discriminated against in this termination because of our race in violation of Wisconsin's Fair Employment Practices Law, and the Civil Rights Act of 1964.

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Lena Roby, Olive McDowell, Cora Tatum, Virgie Jeanes, Marilyn Wesley, Ethel Jones, [redacted], [redacted], [redacted], all being duly sworn, depose and say that they are the complainant's herein; that they have read the attached complaint and know the contents thereof; that the same is true of their own knowledge except as to those matters therein stated on information and belief; and that as to those matters they believe the same to be true.

Lena Roby

Olive McDowell

Cora Tatum

Virgie Jeanes

Marilyn Wesley

Ethel Jones

[redacted]

[redacted]

[redacted]

Subscribed and sworn to before me this 12th day of February, 1973.
Notary Public [redacted] County, Wisconsin
My Commission expires Aug 11 1974

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MAR 5 1973
U.S. EEOC
MILW. DIST.
OFFICE

THERE IS NO PAGE EIGHT.

March 6, 1975

Charge No: TMK3-0519

Ms. Ethel Jones
2143 North First Street
Milwaukee, Wisconsin 53212 Charging Party

vs.

Bagley Produce
1101 West Canal Street
Milwaukee, Wisconsin 53233 Respondent

DETERMINATION

Under the authority vested in me by Section 29 CFR 1601.19 b (d) of the Commission's Procedural Regulations (September 27, 1972), I issue, on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended in March 1972, and the timeliness, deferral, and all other jurisdictional requirements have been met.

Charging Parties allege that Respondent has committed an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, as amended in March, 1972, by discharging them on the basis of their race/Negro.

It is undisputed that Charging Parties were employed with the Respondent as cutters.

Investigation revealed that on the morning of February 7, 1973, Charging Parties, who are Negro females and a Spanish Surnamed American female, approached Respondent to request a raise for the cutters. Charging Parties testified that Respondent told them to take the day off and think about it.

Evidence of record shows that Charging Parties, but not the Spanish American female, left the Respondent facility and met in a place next to the plant, and signed authorization cards and also obtained signatures of other employees. These authorization cards were to be used in an effort to unionize the Company employees.

Evidence of record further revealed that Respondent President was made aware of the concerted activity and subsequently sent telegrams to the homes of the Charging Parties, informing them that they were terminated because they walked off their job.

Respondent Attorney, denies the alleged discriminatory practice because of race and states that the Respondent discharged the Charging Parties because they refused to work, and no discrimination was practiced.

Charging Parties testified subsequent to the charge that they believe they were terminated for attempting to join a union not because of their race, and that the Spanish American female had no involvement in the concerted effort to join the union.

A Decision Order issued December 28, 1973, by the National Labor Relation Board concluded that

Respondent discharged the Charging Parties because they engaged in protected, concerted activities.

We therefore conclude that there is no reasonable cause to believe that Respondent Employer has discriminated against the Charging Parties in violation of Title VII, as alleged.

This determination concludes the Commission's processing of the subject charge. Should the Charging Parties wish to pursue this matter further, they may do so by filing a private action in Federal District Court within ninety (90) days of the receipt of this letter and by taking the other procedural steps set out in the enclosed "NOTICE OF RIGHT-TO-SUE."

On behalf of the Commission:

/s/ Wesley N. Harry
Wesley N. Harry
District Director

Mar. 6, 1975
Date